

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WORCESTER, ss

C.A. NO. 04 CV 40071 NMG

DAMON ASHER (formerly Damon Milhem))

Plaintiff)

)

v.)

)

DISCOVER FINANCIAL SERVICES, INC.)

Defendant)

)

AMENDED COMPLAINT

PARTIES

1. The plaintiff, Damon Asher (formerly Damon Milhem), has, at all material times, resided at 102 Stoneleigh Road, Holden, Massachusetts.
2. The defendant, Discover Financial Services, Inc., [hereinafter "Discover"], is a corporation incorporated in the State of Delaware and with a principal place of business located at 2500 Lake Cook Road, Riverwoods, Illinois. Discover has a registered agent located at, 101 Federal Street, Boston, Massachusetts.
3. At all material times the defendant, Discover, was registered to do business in the Commonwealth of Massachusetts, was conducting business within the Commonwealth of Massachusetts, and was subject to the rules and laws of the Commonwealth of Massachusetts.

FACTS

4. At all material times Discover was doing business with an internet company vendor, Cyberrebates, com.
5. On or about March 20, 2001 to May 3, 2001, Damon Asher used his Discover card to make purchases from Cyberrebates.com.
6. The services that Mr. Asher contracted for with Cyberrebates.com included both the receipt of goods and the receipt of 100% of the price paid for such goods within three (3) months of Mr. Asher's initial payment.
7. Cyberrecreate.com failed to fulfill its obligations under its contract with Mr. Asher by not delivering the goods and services contracted for in accordance with the agreement made at the time of these transactions, namely the checks for 100% of the monies originally paid by Mr. Asher.

8. On or about May 16, 2001, in compliance with M.G.L. ch. 140D, § 29 and 209 C.M.R. 32.13, Mr. Asher provided written notice to Discover setting forth his discrepancy with Cyberrebate.com as a billing error, and requesting that Discover place all of the charges in question in dispute.
9. Discover failed to place the charges made between March 20, 2001 to May 3, 2001 in dispute.
10. On or about June 1, 2001 Discover sent written notification disavowing liability for the charges in question on the basis that Mr. Asher's claims were "separate from the underlying purchase transaction made to your Discover Card Account".
11. Following receipt of this letter, Mr. Asher and his wife spoke to Discover representatives on several occasions regarding the billing error and Discover's obligations under Federal and State law.
12. During at least two of these telephone calls, in an attempt to end the telephone conversation with Mr. Asher and/or his wife, Discover's agents made representations that were later determined to be false and misleading.
13. During this time Mr. Asher also made several requests in accordance with M.G.L. ch. 140D, § 29 and 209 C.M.R. 32.13, that Discover furnish copies of documentary evidence of his indebtedness, including but not limited to written procedures, protocols, and/or guidelines, to support or substantiate Discover's position regarding this matter.
14. Discover failed to provide such documentation.
15. As a result of Discover's failure to correct these billing errors, Mr. Asher failed to receive more than \$13,900.00 in services that were contracted for in his agreement with Cyberrebates.com.
16. On July 6, 2001 Mr. Asher served a demand letter pursuant to M.G.L. ch. 93A, § 9 on Discover at the Office of its CEO in Delaware, at its Dispute Department in Utah, and at its. Legal Department/Agent in Arizona via first class mail, return receipt requested. Grounds for this 93A Claim included Discover Financial Services, Inc.'s violations of M.G.L. ch. 140D, §§ 29, 32, and 34.
17. Although Mr. Asher received the return receipt from all three of Discover's above stated offices, Discover has failed to make any reply to the demand letter.

CAUSES OF ACTION

1. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for failure to fairly and timely resolve a credit billing dispute in violation of M.G.L. ch. 140D, § 29 and 209 C.M.R. 32.13.

2. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for failure to "furnish copies of documentary evidence of the creditor's indebtedness" in violation M.G.L. ch. 140D, § 29 and 209 C.M.R. 32.13.
3. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for the use of willful, knowingly unfair, and deceptive acts and trade practices in violation of M.G.L. ch. 140D, § 34 and M.G.L. ch. 93A, § 9.
4. This is an action by the plaintiff, Damon Asher, against the defendant, Discover Financial Services, Inc., for violation of M.G.L. ch. 140D, § 29 and M.G.L. ch. 140D, § 32.


DEMANDS FOR RELIEF

1. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the First Cause of Action, with interest and costs.
2. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Second Cause of Action, with interest and costs.
3. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Third Cause of Action, with interest, costs, and treble damages.
4. The plaintiff demands Judgment against the defendant, Discover Financial Services, Inc., on the Fourth Cause of Action, with interest, costs, and finance charges.

JURY CLAIM

The plaintiff reserves the right to have the case remanded to Superior Court for a trial by jury.

Respectfully submitted,
The Plaintiff, by his attorney,



KIMBERLY J. ASHER, ESQ.
BBO# 657115
102 Stoneleigh Road
Holden, MA 01520
(781) 290-5788

Dated: May 24, 2004